Supreme Court, U.S.
FILED

10-734 NOV 23 2010

OFFICE OF THE CLERK

NO.

UNITED STATES SUPREME COURT

October Term, 2010

EDUARDO GRACIA BAZAN,
Petitioner

V.

THE STATE OF TEXAS,
Respondent

On Petition For Writ of Certiorari to The Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

EDUARDO GRACIA BAZAN
P.O. Box 324
Elsa, Texas 78543
Tel. (956) 272-2270

PRO SE PETITIONER

QUESTIONS PRESENTED

1. Did the Texas Court of Criminal Appeals err denying the petition for discretionary review and thereby affirming the judgment of the Court of Appeals because Petitioner's counsel rendered ineffective assistance of counsel in (1) failing to timely pursue consolidation of all criminal cases into the first criminal case filed against the Petitioner; (2) failing to pursue and obtain a plea bargain offer from the State,; and (3) in failing to communicate plea bargain offers to the Petitioner?

PARTIES TO THE PROCEEDING

The following is a listing of all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. Eduardo "Walo" Gracia Bazan, Defendant in the trial court, Appellant in the Court of Appeals, Petitioner before the Texas Court of Criminal Appeals, and Petitioner herein.

2. The State of Texas, Plaintiff in the trial court, Appellee in the Court of Appeals, Respondent in the Texas Court of Criminal Appeals, and Respondent herein.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	ii
PARTIES TO THE PROCEEDING	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	viii
JURISDICTION	ix
PERTINENT CONSTITUTIONAL, STATUTORY AND COURT RULE PROVISIONS	ix
STATEMENT OF THE CASE	1
REASONS FOR GRANTING WRIT	5
CONCLUSION	12
APPENDIX	13
A. Order Denying Petition For Discretionary Review entered August 25, 2010 By Texas Court of Criminal Appeals	14

TABLE OF CONTENTS (Cont'd)

APPENDIX (Cont'd)

B.	Memorandum Opinion of 13th Court of Appeals Affirming Judgment of Trial Court.	15
C.	Motion For New Trial	42
D.	Affidavit in Support of Motion For New Trial	48
E.	Trial Court Judgment	55

TABLE OF AUTHORITIES

	Page
CASES	
In re Bazan, — S.W.3d —, (Tex.App.–Corpus Christi April 13, 2005)(unpublished) . . .	1,2,6,7
Hernandez v. State, 726 S.W.2d 53 (Tex.Cr.App.1986) . .	6
Hernandez v. State, 988 S.W.2d 770 (Tex.Cr.App.1999)	6
Ex parte Puckett, — S.W.3d —, (Tex.Crim.App. February 6, 2008)(unpublished).	10
Strickland v. Washington, 466 U.S. 668 (1984)	5,9
Thompson v. State, 9 S.W.3d 808 (Tex.Cr.App. 1999).	6
Ex parteWilson, 724 S.W.2d 72 (Tex.Crim.App.1972)	9-10,11
U.S. CONSTITUTION	
Sixth Amendment, U.S. Const. .	ix, x, 5

TABLE OF AUTHORITIES (Cont'd)

Page

STATUTES

United States Code
28 U.S.C. § 1257(a) ix

LOCAL RULES

Hidalgo Co. Dist. Courts
Local Rules
Hid. Co. Dist. Ct. L.R. 7.4 1

OPINIONS BELOW

This case originated from a criminal case filed in the 92nd District Court of Hidalgo County, Texas, in the case styled The State of Texas v.Eduardo Gracia Bazan, cause number CR-640-06-A. After a jury verdict of guilty on the charge of theft by a public servant, the trial court imposed a sentence of seven years community supervision, and Petitioner appealed. The Thirteenth Court of Appeals of Texas affirmed the judgment of the trial court, and Petitioner filed a Petition For Discretionary Review with the Texas Court of Criminal Appeals. The Texas Court of Criminal Appeals affirmed, and thereafter Petitioner filed the instant application for writ of certiorari.

JURISDICTION

Petitioners seek review of a judgment entered by the Texas Court of Criminal Appeals. The date of entry of the judgment was August 25, 2010, when the Texas Court of Criminal Appeals denied Petitioner's Petition For Discretionary Review. No motion for rehearing was filed with the Texas Court of Criminal Appeals.

Section 1257(a) of Title 28, United States Code, confers to the United States Supreme Court the jurisdiction to review the judgment by writ of certiorari.

PERTINENT CONSTITUTIONAL, STATUTORY, AND COURT RULE PROVISIONS

The Sixth Amendment to the U.S. Constitution states as follows:

Amendment VI. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

Sixth Amendment, U.S. Constitution.

STATEMENT OF THE CASE

Petitioner was charged by indictment dated March 7, 2006 with the offense of theft by a public servant. Such indictment was filed in Cause No. CR-0640-06-A and was assigned to the 92nd District Court. Prior to that time, an indictment was returned against the Petitioner in the 93rd District Court on September 3, 2003. In re Bazan, — S.W.3d —, (Tex.App.–Corpus Christi April 13, 2005)(unpublished opinion). Under Rule 7.4 of the Local Rules of District Courts of Hidalgo County, subsequent indictments must be filed in the court where the first indictment was filed. Petitioner challenged the placement of the instant case into the 92nd District Court via a petition for writ of mandamus, which was

denied with an opinion stating in part that Petitioner had a legal remedy in the form of an appeal. In re Bazan, — S.W.3d —, (Tex.App.–Corpus Christi April 13, 2005)(unpublished opinion).

A jury convicted Petitioner of theft by a public servant. Petitioner filed a motion for new trial, which was denied, and Petitioner appealed.

The Thirteenth Court of Appeals handed down its Memorandum Opinion on February 18, 2010. A motion for rehearing was filed on March 4, 2010, and on the same date a motion for rehearing en banc was also filed. On March 29, 2010, the Thirteenth Court of Appeals entered orders denying the motion for rehearing and the motion for rehearing en

banc. On May 13, 2010, Petitioner filed an Unopposed First Motion For Extension of Time to File Petition For Discretionary Review. Petitioner was granted an extension of time until May 28, 2010 to file the Petition For Discretionary Review. Petitioner timely filed the Petition For Review on May 28, 2010; however, on August 25, 2010, the Texas Court of Criminal Appeals refused said petition.

In his Petition For Discretionary Review to the Texas Court of Criminal Appeals, Petitioner stated Issues Numbers 3, 4 and 5 as follows:

3. The Court of Appeals erred in affirming judgment against the Petitioner because Petitioner's trial counsel rendered ineffective assistance of counsel in failing to

timely pursue consolidation of all criminal cases into the first criminal case filed against the Petitioner, Cause No. CR-2648-03-B.

4. The Court of Appeals erred in affirming judgment against the Petitioner because Petitioner's trial counsel rendered ineffective assistance of counsel in failing to pursue an obtain a plea bargain offer with the State.

5. The Court of Appeals erred in affirming judgment against the Petitioner because Petitioner's trial counsel rendered ineffective assistance of counsel in failing to communicate plea bargain offers to the Petitioner.

Petition For Discretionary Review, p. vii; pp 5-8.

REASONS FOR GRANTING WRIT

Relevant Case Law

The Sixth Amendment to the U.S. Constitution guarantees the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686 (1984). The proper standard for evaluating the performance of counsel is reasonably effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 687 (1984). To obtain a reversal, Petitioner must show that (1) counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms, and (2) such deficient performance prejudiced the defense by more likely than not altering the outcome of the case. Strickland v. Washington, 466 U.S.

668, 687-694 (1984); Hernandez v. State, 726 S.W.2d 53, 57 (Tex.Cr.App.1986). The Strickland requirements for ineffective assistance of counsel should be applied to each phase of a trial. Hernandez v. State, 988 S.W.2d 770, 771-772 (Tex.Cr.App.1999). A successful claim for ineffective assistance of counsel must be "firmly rooted" in the record. Thompson v. State, 9 S.W.3d 808, 813 (Tex.Cr.App. 1999).

Failure to Seek Consolidation

In the case at bar, an indictment was returned against the Petitioner in the 93rd District Court on September 3, 2003. In re Bazan, — S.W.3d —, (Tex.App.–Corpus Christi April 13, 2005)(unpublished opinion). The indictment in the instant case was returned

and filed in the 92nd District Court on December 14, 2004. The indictment in this case was filed in the 92nd District Court.

When Petitioner sought mandamus relief because the indictment in the instant case was filed in the wrong court, the Thirteenth Court of Appeals chided Petitioner for not having filed a motion to consolidate the cases. In re Bazan, — S.W.3d —, (Tex.App.–Corpus Christi April 13, 2005)(unpublished opinion). A review of the court's docket sheet indicates that no motion to consolidate was ever filed.

Despite such specific direction from the opinion of the Court of Appeals, Petitioner's trial counsel nevertheless did not file a motion to consolidate. As a result, Petitioner was deprived of being tried in the court that had

rightful jurisdiction of the case. Ignoring the Court of Appeals' notation that a motion to consolidate had not been filed amounted to a showing that counsel's actions fell below an objective standard of reasonableness under the prevailing professional norms. Normally, if an appellate opinion tells you why you are not granted relief, you resolve those reasons and then again seek relief. In the case at bar, Petitioner's trial court counsel ignored the Court of Appeals decision stating why it would not grant mandamus relief.

The inaction of Petitioner's trial counsel was outcome-determinative. Had the case been sent to the 93rd District Court, it is quite likely today that Petitioner still would not have gone to trial. Because of the extended

period in which the 93rd District Court did not have a sitting trial judge, a backlog of untried cases resulted. Additionally, Petitioner asserts that he would have received every bit of due process allowed to him in the 93rd District Court as the jurist in that Court had himself been the subject of an unwarranted prosecution.

Petitioner's trial counsel's failure to seek consolidation of the instant case into the 93rd District Court resulted in the ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 687-694 (1984). Consequently, this case should be reversed and remanded for a new trial.

Plea Bargain Issues

In Ex parte Wilson, 724 S.W.2d 72

(Tex.Crim.App.1972), the Texas Supreme Court held that the failure to communicate a plea bargain offer constitutes ineffective assistance of counsel. The continuing validity of the holding of Ex parte Wilson was recently reaffirmed when the Texas Court of Criminal Appeals in an unpublished opinion utilized said case as the basis for granting habeas corpus relief where a part's lawyer failed to communicate a plea offer to the party. Ex parte Puckett, — S.W.3d —, (Tex.Crim.App. February 6, 2008)(unpublished).

In the case at bar, Petitioner asserted that his trial counsel did not obtain a plea offer from the State and did not communicate a plea offer from the State (see affidavit attached to Petitioner's Motion For New Trial). Under the

holding of Ex parte Wilson, such omission constituted ineffective assistance of counsel. Perhaps the State would have been willing to bust down the case to a misdemeanor or dismiss the case upon resignation from office by the Petitioner. Because trial counsel did not obtain or communicate a plea bargain offer to Petitioner, Petitioner was left with no choice but to go to trial.

Trial counsel's failure to obtain and communicate a plea bargain offer from the State fell below an objective standard of reasonableness under prevailing professional norms. The Court of Criminal Appeals should therefore grant this Petition For Discretionary Review, reverse the judgment of the Court of Appeals and remand with instructions for a

new trial.

CONCLUSION

For the reasons stated herein, the United States Supreme Court should grant the Petition For Writ of Certiorari and reverse the judgment of the court below and render judgment that the judgment against Petitioner should be reversed and vacated due to ineffective assistance of counsel, or in the alternative, reverse the judgment of the court below and remand for a new trial.

Respectfully submitted,

EDUARDO GRACIA BAZAN
P.O. Box 324
Elsa, Texas 78543
Tel. (956)272-2270
Fax. (956)630-0275

PRO SE PETITIONER

NO. _____

UNITED STATES SUPREME COURT

October Term, 2009

EDUARDO GRACIA BAZAN,
Petitioner

V.

THE STATE OF TEXAS,
Respondent

On Petition For Writ of Certiorari to The Texas Court of Criminal Appeals

APPENDIX

EDUARDO GRACIA BAZAN
P.O. Box 324
Elsa, Texas 78543
Tel. (956) 272-2270

PRO SE PETITIONER

THE COURT OF CRIMINAL APPEALS
OF TEXAS

August 25, 2010

THE FOLLOWING ORDERS ARE ENTERED AND OPINIONS HANDED DOWN:

. . .

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW REFUSED:

. . .

PD-0578-10 BAZAN, EDUARDO
GRACIA FROM HIDALGO
COUNTY - 13-08-00169-CR

. . .

NUMBER 13-08-00169-CR

COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG

EDUARDO GRACIA BAZAN, Appellant,
v.
THE STATE OF TEXAS, Appellee.

On appeal from the 92nd District Court
of Hidalgo County, Texas.

MEMORANDUM OPINION
Before Justices Yañez, Rodriguez, and Garza
Memorandum Opinion by Justice Rodriguez

Appellant Eduardo Gracia Bazan challenges his conviction for theft by a public servant of property valued $1,500 or more but less than $20,000. See TEX. PENAL CODE ANN. § 31.03(a), (e)(4)(A), (f) (Vernon Supp. 2009). By seven issues, Bazan complains that: (1) the trial court lacked jurisdiction over his case because the crime was not committed within the territorial jurisdiction of the State of

Texas; (2) the trial court lacked jurisdiction because he was indicted previously in a different district court and local rules required this case to be filed where the original indictment was filed; (3-5) trial counsel rendered ineffective assistance by failing to consolidate all criminal cases against Bazan into the first-filed case, pursue and obtain a plea bargain, and communicate plea bargain offers to the defendant; (6) the trial court erred in entering judgment against Bazan because there was no evidence that any alleged theft was committed in defendant's capacity as a public servant; and (7) the trial court erred in entering judgment against Bazan because his right to confront and cross-examine adverse witnesses was violated when statements of a

deceased person were allowed into evidence. We affirm.

I. BACKGROUND

In October 2001, Bazan, a Hidalgo County Constable, applied for a certificate of title for a Volkswagen Jetta with the county tax assessor-collector's office (tax office). When the staff at the tax office ran standard checks on the vehicle, the system returned no information. This raised suspicions with the tax office fraud investigators, and the tax office impounded the Jetta. Further investigation revealed that the Jetta had been stolen in Mexico City in 1999. Bazan was eventually indicted in the 92nd District Court of Hidalgo County for:

acquiring and otherwise exercising control over . . . one Volkswagen motor vehicle, of the value of $1,500 or more but less than $20,000 . . . without the effective consent of the owner, namely by deception, and with intent to deprive the owner of the property, and the defendant was then and there a public servant, namely, a Hidalgo County Constable, and such property appropriated by the defendant had theretofore come into his custody and possession and control by virtue of his status as such a public servant . . . .

The case proceeded to a jury trial. Precisely how the vehicle came into Bazan's possession was the subject of voluminous testimony at trial. 1

At the conclusion of the trial, the jury

found Bazan guilty of theft by a public servant. See id. The trial court sentenced Bazan to seven years' confinement, with the punishment suspended and probated over seven years, and assessed a $3,000 fine. Bazan filed a motion for new trial. After a hearing, the trial court denied the motion. This appeal ensued.

II. DISCUSSION

A. Territorial Jurisdiction

By his first issue, Bazan complains that the State was without jurisdiction to prosecute his case. The penal code provides that "[t]his state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if . . . either the conduct or a result that is an element of the offense occurs inside

this state." See id. § 1.04(a)(1) (Vernon 2003); Salazar v. State, 711 S.W.2d 720, 725 (Tex. App.–Corpus Christi 1986, pet. ref'd). The elements of theft in this case are that the defendant: (1) unlawfully appropriated property valued at $1,500 or more but less than $20,000; (2) with intent to deprive the owner of the property; and (3) was, at the time of the theft, a public servant who came into possession of the property by virtue of his status as a public servant. See TEX. PENAL CODE ANN. § 31.03(a), (e)(4)(A), (f); see also Mendoza v. State, No. 13-03-00755-CR, 2005 WL 2476211, at *1 (Tex. App.–CorpusChristi Oct. 6, 2005, no pet.) (mem. op., not designated for publication). Here, Bazan contends that any theft committed in this case occurred in

Mexico, outside the territorial jurisdiction of Texas, and because of that, the State lacked authority to pursue his case in Texas. We disagree. The fact that the car was or was not stolen in Mexico is irrelevant to the charges against Bazan. Bazan's indictment was based on allegations that he used his position as a constable to gain title to a vehicle that he knew or should have known was stolen. Thus, the alleged criminal conduct of Bazan—that he unlawfully appropriated a vehicle valued at approximately $9,500 by falsifying title documents in an attempt to "wash" the title of a stolen Mexican vehicle—occurred in Texas, and the trial court had jurisdiction to hear the case. See TEX. PENAL CODE ANN. §§ 1.04(a)(1), 31.03(a), (e)(4)(A), (f). Bazan's first

issue is overruled.

B. Jurisdiction and the Local Rules

In his second issue, Bazan challenges the jurisdiction of the 92nd District Court of Hidalgo County over his case. Specifically, Bazan argues that because he was first indicted for the offense in the 93rd District Court, local rules required all subsequent cases against him to be filed in the court of his original indictment thereby divesting the 92nd District Court of any authority over this case. See HIDALGO COUNTY DIST. CTS. LOC. R. 1.2.7 ("If a case is on the docket of a court by any manner other than as prescribed by these rules, the Presiding Judge shall transfer the case to the proper court."), 7.4 ("When several indictments are returned against the same

defendant, the court in which the first indictment is filed shall receive all such indictments."). Although Bazan raises a jurisdictional argument, he complains of the local rules, which are adopted for administrative purposes and do not necessarily create jurisdiction in any certain court. See TEX. GOV'T CODE ANN. §§ 24.304 (Vernon 2004) (allowing judges in counties where there are two or more district courts to "adopt rules governing the filing and numbering of cases . . . and the distribution of the work of the courts . . . [to enable] the orderly dispatch of the business of the courts"), 74.093 (Vernon Supp. 2009) (providing for the adoption of "local rules of administration" to govern the "assignment, docketing, transfer, and hearing of all cases,

subject to jurisdictional limitations" of the district courts) (emphasis added); see also Bourque v. State, 156 S.W.3d 675, 678 (Tex. App.–Dallas 2005, pet. ref'd) (recognizing the authority of district judges to adopt rules governing the administration of multiple district courts). Rather, as conceded by Bazan, the 92nd District Court is vested by the Texas Constitution with jurisdiction over felony cases in Hidalgo County. See TEX. CONST. art. V, § 8; Skillern v. State, 890 S.W.2d 849, 859 (Tex. App.–Austin 1994, pet. ref'd) (citing Fairfield v. State, 610 S.W.2d 771, 779 (Tex. Crim. App. 1981)). We refuse to construe the local rules of administration, see TEX. GOV'T CODE ANN. §§ 24.304, 74.093, in such a way that they divest the trial court of its constitutionally-

created authority to preside over felony indictments. See TEX. CONST. art. V, § 8. Bazan's second issue is overruled.

C. Ineffective Assistance of Counsel

By his third, fourth, and fifth issues, Bazan argues that his trial counsel's assistance was ineffective.

1. Standard of Review

To establish a claim for ineffective assistance of counsel, the appellant must show (1) his attorney's representation fell below an objective standard of reasonableness, and (2) there was a reasonable probability that, but for his attorney's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 664, 668 (1984); Mallett v. State, 65 S.W.3d 59, 62 (Tex.

Crim. App. 2001). Our review of counsel's representation is deferential, and we presume that counsel gave his client professional assistance. Mallett, 65 S.W.3d at 62 (citing Tong v. State, 25 S.W.3d 707, 712 (Tex. Crim. App. 2000)). The appellant bears the burden of proof to show by a preponderance of evidence that his counsel's performance was below that which is objectively reasonable. Thompson v. State, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999).

Generally, the trial record will not be sufficient to establish an ineffective assistance of counsel claim. Id. at 813-14; Kemp v. State, 892 S.W.2d 112, 115 (Tex. App.–Houston[1st Dist.] 1994, pet. ref'd). This is true because normally a silent record cannot rebut the

presumption that counsel's performance was the result of sound or reasonable trial strategy. Strickland, 466 U.S. at 688; Stafford v. State, 813 S.W.2d 503, 506 (Tex. Crim. App. 1991). However, a defendant may rebut the presumption by providing a record from which the appellate court may determine that trial counsel's conduct was not based upon a reasonable strategic or tactical decision. Jackson v. State, 877 S.W.2d 768, 771-72 (Tex. Crim. App. 1994); Bohnet v. State, 938 S.W.2d 532, 536 (Tex. App.–Austin 1997, pet. ref'd). The record from a motion for new trial hearing can serve this purpose, see Jackson, 877 S.W.2d at 771-72, and Bazan has provided such a record for our review.

2. Failure to Consolidate Cases

In his third issue, Bazan argues that his trial counsel rendered ineffective assistance because he failed to consolidate all of Bazan's criminal cases into the first criminal case filed against him in the 93rd District Court. At the hearing on his motion for new trial, Bazan presented the testimony of Ricardo Salinas, a criminal defense attorney who testified that trial counsel's failure to consolidate the cases constituted deficient performance because consolidation would have delayed a trial in Bazan's case, and delay is in the best interest of any criminal defendant. 2 However, Salinas also acknowledged that the factors influencing the decision to pursue consolidation differ in each case and that it is difficult to know whether consolidation is the best option. Our

review of the trial record further reveals that Bazan's trial counsel was aware of the multiple cases and attempted at trial to inform the jury of what he characterized as the alleged political nature of the various cases filed against Bazan. Thus, based on the trial record and the testimony of Salinas, we cannot conclude that the decision of Bazan's trial counsel to not pursue consolidation fell below an objective standard of reasonableness, and Bazan has not rebutted the presumption that the decision was the result of sound and reasonable trial strategy. See Strickland, 466 U.S. at 688; Mallett, 65 S.W.3d at 62. Bazan's third issue is overruled.

3. Plea Bargain

By his fourth and fifth issues, Bazan

claims his trial counsel was ineffective for failing to obtain a plea bargain from the State and failing to communicate plea bargain offers to Bazan. While it is true that defense counsel's failure to inform his client of a plea bargain offer falls below the objective standard of reasonableness for effective performance, Ex parte Lemke, 13 S.W.3d 791, 795-96 (Tex. Crim. App. 2000), Bazan points us to no evidence in the record, and we find none, indicating that the State ever made such an offer to Bazan's trial counsel. In fact, the prosecutor who tried the case, Andy Almaguer, testified at Bazan's motion for new trial hearing that the State never would have offered Bazan a lesser punishment, such as pretrial diversion or deferred adjudication, in

exchange for a guilty plea. Neither do we find that Bazan's trial counsel rendered deficient performance for failing to diligently pursue a plea bargain. At Bazan's hearing on his motion for new trial, Salinas testified that a defense attorney's performance would be deficient if he did not make every effort to obtain a plea bargain offer. However, other testimony at the hearing established that Bazan had never asked his trial counsel to engage in plea negotiations, that Bazan had instructed his trial counsel that dismissal was the only option to pursue with the State, and that he was not interested in plea bargaining. The foregoing evidence does not rebut the presumption that the performance of Bazan's trial counsel regarding plea bargaining with the State was

objectively reasonable. See Mallett, 65 S.W.3d at 62; Thompson, 9 S.W.3d at 813. Bazan's fourth and fifth issues are overruled.

D. No Evidence

By his sixth issue, Bazan argues that there was no evidence that any alleged theft was committed in defendant's capacity as a public servant. However, Bazan fails to specify the type of challenge he is making to the evidence at trial, and based on his brief, we are unable to discern the nature of his argument. Most importantly, Bazan cites to no legal authority and does not point us to any portion of the record that would aid us in determining what sort of evidentiary challenge he is mounting. See TEX. R. APP. P. 38.1(I)

(requiring appellant's brief to contain a "clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"). We therefore conclude that Bazan has inadequately briefed this issue and has waived his challenge to the evidence. See id. Bazan's sixth issue is overruled.

E. Confrontation

By his seventh issue, Bazan complains that the trial court violated his constitutional right to confront and cross-examine adverse witnesses by allowing the statements of a deceased person, Raul De La Rosa, into evidence. See U.S. CONST. amend. VI; TEX. CONST. art. I, § 10.

1. Standard of Review and Applicable Law

The Confrontation Clause prohibits a

witness from recounting a declarant's out-ofcourt testimonial statements unless the declarant is unavailable to testify and the defendant had a prior opportunity to cross-examine the declarant. Crawford v. Washington, 541 U.S. 36, 59 (2004). Generally, a statement is considered "testimonial" if it is a "solemn declaration made for the purpose of establishing some fact." Russeau v. State, 171 S.W.3d 871, 880 (Tex. Crim. App. 2005).

However, even if we find the statement is testimonial and that its admission is constitutional error, that error is subject to a harmless error analysis, and "we need not reverse the trial court's judgment if we conclude beyond a reasonable doubt that the error did not contribute to appellant's

punishment." Id. at 881; see TEX. R. APP. P. 44.2(a). The reviewing court must first assume that the damaging potential of the violation was fully realized. Shelby v. State, 819 S.W.2d 544, 547 (Tex. Crim. App. 1991) (citing Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)). With that assumption in mind, we analyze the alleged error in connection with the following factors: (1) the importance of the witness's

testimony to the prosecution's case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the witness's testimony on material points; (4) the extent of cross-examination permitted; and (5) the overall strength of the prosecution's case. Id. (citing

Van Arsdall, 475 U.S. at 684).

2. Analysis

Based on our review of the trial record, it appears the State was attempting to introduce the written statement given by Raul De La Rosa, owner of De La Rosa Collision Wrecker Service, for purposes of proving that Bazan lied about the Jetta being abandoned, towed and impounded, and auctioned at a sale of abandoned vehicles. However, further review of the record reveals that the statement was never admitted; Bazan objected to the admission of the statement given to the fraud investigators each time the State attempted to admit it, and the trial court sustained the objections.

On two other occasions, other statements

by De La Rosa came into evidence through the arguably hearsay testimony of one of the fraud investigators; the investigator testified that De La Rosa had initially told him that there had been a tow-away but later recanted and admitted there had been no tow-away, impoundment, or auction. We first note that Bazan lodged no objections to this testimony. See Acevedo v. State, 255 S.W.3d 162, 173 (Tex. App.–San Antonio 2008, pet. ref'd) (holding that a defendant does not preserve the issue for review where he fails to object at trial based on the Confrontation Clause). But even presuming that the admitted statements violated Bazan's right to confront and cross-examine an adverse witness, see Shelby, 819 S.W.2d at 547 (assuming that the damaging

potential of the violation was fully realized), the same information was admitted through the testimony of other live witnesses without objection. See Russeau, 171 S.W.3d at 881; see also Baldree v. State, 248 S.W.3d 224, 232 (Tex. App.–Houston [1st Dist.] 2007, pet. ref'd) (holding that trial court's violation of the defendant's confrontation clause rights was harmless in light of the later introduction of the same information). Angela Fraide, who was employed at De La Rosa Collision Wrecker Service at the time of the incident, testified that the Jetta was never impounded in their yard and was never auctioned. She further testified that she prepared a false towing slip at the direction of De La Rosa. Ray Eufracio, the Hidalgo County Auditor, testified that his

office had no records of any auction proceeds being filed in connection with the Jetta. Mario Leal, a deputy constable in Bazan's office, testified that the constable's office had no record of the Jetta. Perfecta De La Rosa, the widow of Raul De La Rosa who operated the wrecker business after his death, confirmed that the Jetta had never actually been in the De La Rosa Collision Wrecker Service yard. In sum, because the same information concerning the towing, impoundment, and auction was later presented to the jury without objection, any violation of the Confrontation Clause was rendered harmless, and we conclude, beyond a reasonable doubt, that any resulting error did not contribute to Bazan's punishment. See Russeau, 171 S.W.3d at 881; Baldree, 248

S.W.3d at 232. Bazan's seventh issue is overruled.

III. CONCLUSION

The judgment of the trial court is affirmed.

NELDA V. RODRIGUEZ

Justice

Do not publish.

TEX. R. APP. P. 47.2(b).

Delivered and filed the 18th day of February, 2010.

[FOOTNOTES:]

1 Bazan initially represented that the Jetta was an abandoned vehicle and that, as

constable, he impounded the vehicle at De La Rosa Collision Wrecker Service before holding an auction and buying the Jetta at the auction. The tax office fraud investigators testified that Bazan attempted to file two documents with the office—a title application and an auction receipt—and that each purported to confirm this story. The documents certified that the owner of the Jetta had been properly notified prior to the auction. One of the investigators testified that Bazan, in fact, had never attempted to contact the owner of the Jetta.

The investigator then stated that he was subsequently approached by a friend of Bazan's who claimed that he had sold the Jetta to Bazan. This story was called into question by the testimony of the Hidalgo County Tax Assessor-Collector, who stated that he learned that Bazan had bought the Jetta from drug dealers who took the car from a person who had failed to pay for his drugs.

2 Salinas based his delay prediction on the fact that the judge in the 93rd District Court was under indictment at the time of Bazan's trial in the 92nd District Court and, as a result, had a backlog of untried cases.

CAUSE NO. CR-0640-06-A

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	92ND JUDICIAL DISTRICT
	§	
EDUARDO GRACIA BAZAN	§	HIDALGO COUNTY TEXAS

DEFENDANT'S MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant EDUARDO GRACIA BAZAN, files this his Motion For New Trial, and in support thereof, would respectfully show:

1. On August 3, 2006, the trial court pronounced in open court the sentence upon Defendant .

2. Defendant requests that the Court grant him a new trial on the grounds set forth

herein.

POINT OF ERROR NO. 1: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION.

POINT OF ERROR NO. 2: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THE STATE FAILED TO PROVIDE PROPER NOTICE OF ITS INTENTION TO USE SPANISH-LANGUAGE DOCUMENTS IN CAUSE NO. CR-0640-06-A.

POINT OF ERROR NO. 3: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THERE WAS NO EVIDENCE THAT ANY ALLEGED THEFT WAS COMMITTED IN DEFENDANT'S CAPACITY AS A PUBLIC SERVANT.

POINT OF ERROR NO. 4: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THERE WAS INSUFFICIENT EVIDENCE FOR THE COURT TO ENTER AN ORDER REQUIRING DEFENDANT'S IMMEDIATE REMOVAL FROM HIS POSITION AS CONSTABLE PENDING THE APPEAL.

POINT OF ERROR NO. 5: THE TRIAL

COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THERE WAS NO EVIDENCE FOR THE COURT TO ENTER AN ORDER REQUIRING DEFENDANT'S IMMEDIATE REMOVAL FROM HIS POSITION AS CONSTABLE PENDING THE APPEAL.

POINT OF ERROR NO. 6: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THE TRIAL COURT LACKED JURISDICTION.

POINT OF ERROR NO. 7: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE THE 93RD DISTRICT COURT PROPERLY HAD JURISDICTION OVER FELONY CASES AGAINST THE DEFENDANT.

POINT OF ERROR NO. 8: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE DEFENDANT'S RIGHT TO DUE PROCESS OF LAW AND DUE COURSE OF LAW WERE VIOLATED WHEN DOCUMENTS WRITTEN IN THE SPANISH LANGUAGE WERE INTRODUCED INTO EVIDENCE OVER OBJECTION.

POINT OF ERROR NO. 9: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE

DEFENDANT'S RIGHT TO CONFRONT AND CROSS-EXAMINE ADVERSE WITNESSES WAS VIOLATED WHEN STATEMENTS OF A DECEASED PERSON WERE ALLOWED INTO EVIDENCE.

POINT OF ERROR NO. 10: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE A JUROR USED A PHONE TO SEND AND RECEIVE TEXT MESSAGES DURING JURY DELIBERATIONS.

POINT OF ERROR NO. 11: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO PURSUE AND OBTAIN A PLEA BARGAIN OFFER WITH THE STATE.

POINT OF ERROR NO. 12: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO COMMUNICATE PLEA BARGAIN OFFERS TO THE DEFENDANT.

POINT OF ERROR NO. 13: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE

DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO TIMELY PURSUE CONSOLIDATION OF ALL CRIMINAL CASES INTO THE FIRST CRIMINAL CASE FILED AGAINST THE DEFENDANT, CAUSE NO. CR-2648-03-B.

POINT OF ERROR NO. 14: THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST DEFENDANT BECAUSE DEFENDANT'S RIGHT TO DUE PROCESS OF LAW AND DUE COURSE OF LAW WAS VIOLATED WHEN TRANSLATIONS OF SPANISH LANGUAGE DOCUMENTS AND TESTIMONY WERE INACCURATE.

3. Defendant has attached his Affidavit in support of this Motion For New Trial.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court enter an Order granting a new trial, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

/s/Kelly K. McKinnis

KELLY K. McKINNIS
State Bar No. 13725200
612 Nolana, Suite 240
McAllen TX 78504
956.686.7039

ATTORNEY FOR
DEFENDANT
EDUARDO GRACIA BAZAN

APPROVED:

/s/Eduardo Gracia Bazan
EDUARDO GRACIA BAZAN

CERTIFICATE OF SERVICE

I certify that on September 1, 2006, a true copy of the foregoing was forwarded to Andrew Almaguer, Assistant District Attorney, Hidalgo County Courthouse, Edinburg, Texas 78539.

/s/Kelly K. McKinnis
Kelly K. McKinnis

STATE OF TEXAS §
§ AFFIDAVIT
COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared EDUARDO "WALO" BAZAN, who upon being duly sworn upon oath, deposed and stated as follows:

"My name is Eduardo Bazan, and I am commonly known as Walo Bazan. I am over the age of 18 years and have never been declared mentally incompetent. I have personal knowledge of all facts stated herein. All facts stated herein are true and correct. Prior to the jury verdict and judgment rendered in this case (Cause No. CR-0640-06-A), I had never been convicted of a felony, and the conviction in Cause No. CR-0640-06-A has not become final.

"On June 21, 2006, a jury verdict was returned in Cause No. CR-0640-06-A finding me guilty of theft of property of a value of $1,500.00 or more but less than $20,000.00 by a public servant. On August 3, 2006, sentence was pronounced in open court and a written judgment was signed on August 4, 2006.

"The instant case (Cause No. CR-0640-06-A) was filed in the 92nd District Court with the case styled State of Texas v. Eduardo Gracia Bazan. The Indictment in Cause No. CR-0640-06-A was filed on or about March 7, 2006 with the Hidalgo County District Clerk.

"At the time the Indictment was filed in Cause No. CR-0640-06-A, I was already under indictment in Cause No. CR-2648-03-B. My prior case was assigned to the 93rd District

Court of Hidalgo County.

"I have been informed that under Rule 7.04 of the Local Rules of Hidalgo County District Courts, when several indictments are issued against a defendant, all subsequent indictments are filed in the court in which the first indictment was filed. In the case at bar, my first case was filed in the 93rd District Court, but the instant case (Cause No. CR-0640-06-A)was filed in the 92nd District Court in contravention to the Local Rules of the Hidalgo County District Clerk.

"The Court of Appeals eventually denied a mandamus action filed in connection with efforts to consolidate the cases, but on information and belief based upon a physical inspection of the district clerk's file in Cause

No. CR-2648-03-B, no order was signed on the Defendant's motion to consolidate in Cause No. CR-2648-03-B. Thus, at the time of trial, the motion to consolidate remained unresolved in that no written order had been entered by the trial court on the motion to consolidate.

"Any delay in presenting the motion to consolidate was not my doing, but the delay caused me my right to have all my cases tried in the 93rd District Court.

"At no time during the preparation for trial or during the trial itself was any plea bargain offer ever communicated to me by my counsel. At no time was I ever told what my options were regarding reaching a plea bargaining agreement with the State. Had I been told that the case could have been

resolved short of a conviction, such as with deferred adjudication or pre-trial diversion, I would not have elected to have gone to trial.

"During the trial, there were documents that were originally written in Spanish that were introduced as trial exhibits. These documents were not filed beforehand with the Clerk in Cause No. CR-0640-06-A, and I had no prior notice that the documents were going to be used in trial in Cause No. CR-0640-06-A. The documents had been filed in connection with another case, but the documents were never filed in Cause No. CR-0640-06-S before trial.

"In addition, I believe that the translation of douments from Spanish to English was not proper. Furthermore, during the trial, when

the Court interpreter interpreted from Spanish to English for a testifying witness, the Spanish statements said by the witness were not able to be heard in their entirety by myself and others in the courtroom. During some of the few times that I could hear what the witness said in Spanish, the translation was not completely accurate.

"During the course of my trial, the Court allowed as evidence statements attributed to Raul De La Mora. Mr. De La Mora was dead at the time of trial, but certain statements he allegedly made were allowed to come in as evidence. Many of these statements were false. My lawyer could not examine Raul De La Mora, and I was thereby deprived of the ability to discredit his statements."

Further the Affiant Sayeth Not.

/s/Eduardo Bazan
EDUARDO "WALO" BAZAN,
Affiant

SUBSCRIBED AND SWORN to by the said EDUARDO "WALO" BAZAN, to certify which witness my hand and seal of office this 1 day of September, 2006.

/s/Medardo Porras III
Notary Public, State of Texas

[notary seal:
MEDARDO PORRAS III
Notary Public, State of Texas
My Commission Expires
07-14-2009]

Case No. CR-0640-06-A
TRN 904 020 2877 A001

THE STATE OF TEXAS	§	IN THE 92ND JUDICIAL DIS-
v. EDUARDO	§	TRICT COURT
GRACIA BAZAN,	§	OF HIDALGO
DEFENDANT	§	COUNTY,
SID: TX 00921535	§	TEXAS

JUDGMENT OF CONVICTION BY JURY & ORDER OF COMMUNITY SUPERVISION

DATE OF JUDGMENT:	August 4, 2006
JUDGE PRESIDING:	HORACIO PENA, JR.
ATTORNEY FOR THE STATE:	ANDREW ALMAGUER
ATTORNEY FOR THE DEFENDANT:	AL ALVAREZ
OFFENSE CODE:	23990087
OFFENSE:	THEFT OF PROPERTY OF THE VALUE OF $1,500.00 OR MORE BUT LESS THAN $20,000.00 BY A PUBLIC SERVANT AS CHARGED IN THE INDICTMENT
DATE OF OFFENSE:	October 24, 2001

DEGREE OG OFFENSE:	A THIRD DEGREE FELONY
STATUTE FOR OFFENSE:	31.03(f) PENAL CODE
PUNISHMENT RANGE (Including enhancements if any):	2 - 10 YEARS IN PRISON MAX $10,000 FINE
CHARGING INSTRUMENT:	INDICTMENT
PLEA TO OFFENSE:	NOT GUILTY
JURY VERDICT TO OFFENSE:	GUILTY
FINDINGS OF THE COURT, TO WIT:	
PUNISHMENT IMPOSED BY THE COURT:	SEVEN (7) YEARS IMPRISONMENT
PLACE OF IMPRISONMENT:	INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE
COMMUNITY SUPERVISION PERIOD:	SEVEN (7) YEARS
FINE:	$3,000.00
RESTITUTION:	NONE
TIME SPENT IN JAIL:	TWO (2) DAYS

DISMISS:	NONE
CONSIDER:	NONE
CONCURRENT WITH:	NONE
PLEA TO ENHANCE MENT PARAGRAPH(S):	NONE
FINDINGS TO ENHANCEMENT:	NONE
FINDING ON DEADLY WEAPON:	NONE
COURT COSTS:	$278.00

On JUNE 12, 2006, the above numbered and entitled cause was regularly reached and called for trial, and the State appeared by ANDREW ALMAGUER, and the Defendant and Defendant's attorney, AL ALVAREZ, were also present. Thereupon both sides announced ready for trial, and the Defendant pleaded NOT GUILTY to the offense charged in the indictment or information. Furthermore, as to the enhancement paragraphs, if any, the Defendant entered a plea of NONE.

A Jury was duly selected, impaneled and

sworn, and having heard the evidence submitted and having been duly charged by the Court, the Jury retired to consider their verdict. Afterward, being brought into open Court by proper officer, the Defendant, the Defendant's attorney, and the State's attorney being present, and being asked if the jury had agreed upon a verdict, the Jury answered it had and returned to the Court a verdict, which was read aloud, received by the Court, and is now entered upon the minutes of the Court as follows:

We, the Jury, find the Defendant, EDUARDO GRACIA BAZAN, GUILTY of the offense of THEFT OF PROPERTY OF THE VALUE OF $1,500.00 OR MORE BUT LESS THAN $20,000.00 BY A PUBLIC SERVANT as

charged in the indictment.

\s\

PRESIDING JUROR

Thereupon the Court, having been previously elected by the Defendant to assess punishment in this case, heard evidence related to the question of punishment. Thereafter, the Court made a finding of NONE as to the enhancement paragraph(s), if any, and assessed punishment at SEVEN (7) YEARS in the INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE and a fine of $3,000.00.

A pre-sentence investigation report WAS DONE according to Article 42.12, Sec. 9, CCP.

And thereupon on AUGUST 3, 2006, the Court then asked the Defendant whether the

Defendant had anything to say why the sentence should not be pronounced upon Defendant, and after presenting evidence by way of testimony for the court's consideration on punishment, the Court proceeded to pronounce sentence upon Defendant.

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the Defendant is GUILTY of the offense of THEFT OF PROPERTY OF THE VALUE OF $1,500.00 OR MORE BUT LESS THAN $20,000 BY A PUBLIC SERVANT, AS CHARGED IN THE INDICTMENT, committed on OCTOBER 24, 2001; that the punishment is fixed at SEVEN (7) YEARS in the INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE and a fine of $3,000.00;

and the State of Texas do have and recover of the Defendant all court costs in this prosecution expended, for which execution will issue.

However, the Court, after due consideration, is of the opinion and so finds that the end of justice and the best interests of the public are is best served in this cause if the imposition of the sentence is suspended and the Defendant is placed on community supervision under the direction of the Court.

It is, therefore, ORDERED by the Court that the imposition of the sentence of confinement or imprisonment in this cause is hereby suspended and the Defendant is placed on community supervision for a period of SEVEN (7) YEARS, with a fine of $3,000.00

subject to the conditions of supervision imposed by the Court in an order that is hereby incorporated into this Judgment and has been served on the Defendant.

Order Imposing Conditions of Community Supervision

In accordance with the authority conferred by article 42.12 of the Code of Criminal Procedure, the Court has placed the Defendant on community supervision for a period of SEVEN (7) YEARS. The Court hereby ORDERS the Defendant to comply with the following conditions of community supervision:

1. Commit no offense against the laws of this State, or of any other State, or the United States.
2. Avoid injurious or vicious habits.

3. Avoid persons or places of disreputable or harmful character.
4. Obey all rules and regulations of the Hidalgo County Community Supervisions and Corrections Department.
5. Permit the Supervision Officer to visit Defendant at Defendant's home or elsewhere.
6. Work faithfully at suitable employment as far as possible.
7. Remain within the limits of Hidalgo County, Texas, unless given permission to leave there from.
8. Support any dependents.
9. Attain an educational skill level that is equal to or greater than the average skill level of students who have completed the

sixth grade in public schools in this State by participating fully in the Hidalgo County Community Corrections & Supervision Education and Employment Program beginning immediately, comply with the developmental training, and obey all rules and regulations of the program.

10. Submit to testing for alcohol or controlled substances by authorized personnel of the Hidalgo County Community Corrections & Supervision Department.

11. Report monthly in person to the Supervision Officer beginning immediately and continue as directed by the Supervision Officer.

12. Pay a MONTHLY FEE to the Court in

the amount of $40.00 due on or before 30 days from the date of this Order and every month thereafter during the community supervision period, payable at the Community Supervision and Corrections Department, 918 E. Business Hwy 83, McAllen, Texas.

13. Pay COURT COSTS to the County of Hidalgo within 90 days from the date of this Order payable at the HIDALGO COUNTY CLERK COLLECTION DEPARTMENT, 100 N. CLOSNER, EDINBURG, TEXAS.

14. Pay the FINE in the amount of $3,000.00 in monthly installments of $100.00 commencing thirty (30) days from the date of this Order and continuing every

month thereafter until paid in full, payable at the HIDALGO COUNTY CLERK COLLECTION DEPARTMENT, 100 N. CLOSNER, EDINBURG, TEXAS.

15. WORK 160 HOURS at a COMMUNITY SERVICE project(s) for an organization(s) approved by the Judges and designated by the Hidalgo County Community Supervision & Corrections Department at the rate of not less than eight (8) hours per week beginning immediately and continuing every week thereafter until completed in full.

16. AVOID BARS, TAVERNS, "CANTINAS", LOUNGES, POOL HALLS, and all establishments whose primary business or source of income is selling or

distributing alcoholic beverages, and AVOID THE USE OR ABUSE OF ANY AND ALL ALCOHOLIC BEVERAGES OR MIND-ALTERING DRUGS during the entire period of community supervision.

17. CRIME STOPPERS PROGRAM, as defined by Section 414.001 of the Government Codee and certified by the Crime Stoppers Advisory counsel, in the amount of $50.00, payable at the Hidalgo County Community Supervision and Corrections Department, 918 E. Business Hwy 83, McAllen, Texas.

18. ATTEND and successfully COMPLETE a 12-HOUR ALCOHOL EDUCATION PROGRAM certified by the Texas

Commission on Alcohol and Drug Abuse and approved by the Hidalgo County Board of Judges; pay the costs of the classes directly to the sponsoring agency; begin and complete the classes within 180 days from the date of this Order; and submit a copy of the certificate of completion to the Hidalgo County Community Supervision and Corrections Department.

Furthermore, the following special findings or orders apply:

The Court finds that all court-ordered payments, if any, are suspended during the Defendant's custodial supervision, if any, and

such payments shall be reinstated thirty days from the date of discharge from such custodial supervision.

The Court, upon the State's motion, DISMISSED the following count, case or complaint: NONE

The Court, upon the Defendant's request and the State's consent, CONSIDERED as an admitted unadjudicated offense the following count, case or complaint: NONE.

The Court finds that this community supervision order shall run concurrent with: NONE.

The Court finds that Defendant has spent TWO (2) DAYS in county jail.

IT IS ORDERED by the Court that the Defendant be immediately removed from the

Office of Constable for Precinct No. Five (5) pursuant to Section 87.031 of the Texas Local Government Code.

The Court finds that if the Defendant appeals this Judgment in whole or in part, the public interest requires suspension of the Defendant from office, and the Defendant is hereby suspended from the Office of Constable for Precinct No. Five (5) pending the appeal pursuant to Section 87.032 of the Texas Local Government Code.

The Defendant is hereby advised that, under the laws of the State of Texas, the Court shall determine the conditions of community supervision and may, at any time during the period of supervision, alter or modify the conditions of supervision. The Court may also

extend the period of supervision and has authority to revoke the community supervision at any time during the period of supervision for any violation of the conditions.

Signed on the 4th day of August, 2006.

/s/Horacio Pena, Jr.
Judge Presiding

Receipt is hereby acknowledged on the date shown above of one copy of the above Judgment and Order.

/s/Eduardo Bazan
Defendant

/s/
Community Supervision Officer

MS

Defendant's right thumbprint